

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 141

May 18, 1998, 6:51 pm
Page S-4998 Temp. Record

AMERICAN COMPETITIVENESS ACT/Final Passage

SUBJECT: American Competitiveness Act of 1998 . . . S. 1723. Final passage, as amended.

ACTION: BILL PASSED, 78-20

SYNOPSIS: As passed, S. 1723, the American Competitiveness Act, will respond to a shortage of skilled workers in the United States, particularly in high technology fields, by increasing for 5 years the number of temporary work (H-1B) visas the United States grants each year for such workers and by authorizing \$50 million annually in matching educational grants for mathematics, computer, and engineering degrees for disadvantaged, low-income students. Details are provided below.

● Background on H-1B visas: Prior to passage of the Immigration Act of 1990, no limit was placed on the granting of temporary skilled work visas. In 1990, an arbitrary cap of 65,000 was chosen to reassure critics that an unlimited supply of such visas would not be available. In order to qualify for an H-1B visa, an individual must be in a "specialty occupation," which is defined as having theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). The employer must also file an application attesting that the actual wage level paid will be at least equal to the amount paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or will be at least equal to the prevailing wage level for the occupational classification in the area of employment. Also, that attestation will state that the working conditions for the worker will not adversely affect the working conditions of workers similarly employed. Temporary workers are granted 3-year visas; those visas may be extended once, for an additional 3 years. Since 1990, approximately half of the workers who have entered the United States on temporary visas have been sponsored by their employers for permanent work visas. Approximately 140,000 such permanent visas may be granted annually for all types of legal immigrants. Until 1997, the 65,000 cap was never reached. In 1997, it was reached in July, so no new H-1B skilled workers could be brought in until 1998. The 65,000 limit was reached this month for 1998, and next year, if it is not raised, it will be reached in January. The sharp demand for more H-1B workers has been driven primarily by a shortage of qualified employees for new Information Technology (IT) jobs. A Virginia Tech University study has found that 10 percent, or 340,000, of current IT

(See other side)

YEAS (78)			NAYS (20)		NOT VOTING (2)	
Republicans (51 or 96%)		Democrats (27 or 60%)	Republicans (2 or 4%)	Democrats (18 or 40%)	Republicans (2)	Democrats (0)
Abraham	Hutchison	Baucus	Hutchinson	Akaka	D'Amato- ²	
Allard	Inhofe	Bingaman	Thomas	Biden	Faircloth- ²	
Ashcroft	Jeffords	Boxer		Bumpers		
Bennett	Kempthorne	Breaux		Byrd		
Bond	Kyl	Bryan		Durbin		
Brownback	Lott	Cleland		Feingold		
Burns	Lugar	Conrad		Glenn		
Campbell	Mack	Daschle		Harkin		
Chafee	McCain	Dodd		Kennedy		
Coats	McConnell	Dorgan		Kerry		
Cochran	Murkowski	Feinstein		Levin		
Collins	Nickles	Ford		Mikulski		
Coverdell	Roberts	Graham		Moseley-Braun		
Craig	Roth	Hollings		Moynihan		
DeWine	Santorum	Inouye		Rockefeller		
Domenici	Sessions	Johnson		Sarbanes		
Enzi	Shelby	Kerrey		Torricelli		
Frist	Smith, Bob	Kohl		Wellstone		
Gorton	Smith, Gordon	Landrieu				
Gramm	Snowe	Lautenberg				
Grams	Specter	Leahy				
Grassley	Stevens	Lieberman				
Gregg	Thompson	Murray				
Hagel	Thurmond	Reed				
Hatch	Warner	Reid				
Helms		Robb				
		Wyden				

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

positions are vacant. The Department of Commerce estimates that this rapidly growing industry will add 130,000 jobs per year for each of the next 10 years, and that American universities will be producing only 25 percent of the graduates needed to fill those jobs.

- Visa caps: for fiscal year (FY)1998, the H-1B cap will be raised to 95,000. For each of FYs 1999-2000, the cap will be 85,000, and a new temporary work visa category (H-1C) for health care professionals (excluding doctors) will be created with an annual cap of 10,000. Such workers currently can receive H-1B visas; the purpose of creating the separate category is to determine how many such visas are granted and to limit their number. Any visas not used in the H-1C category in a year will be added to the H-1B cap in the following year. Also, up to 20,000 unused H-2B visas (for unskilled workers) in a year may be added to the H-1B cap in the following year.

- Education and training in science and technology: an additional \$50 million per year will be authorized for the State Student Incentive Grant (SSIG) program to create approximately 20,000 scholarships per year for low-income students pursuing associate, undergraduate, or graduate level degrees in mathematics, engineering, or computer science. The grants will require a dollar-for-dollar State match. The bill will also authorize \$10 million per year for each of FYs 1999-2003 to train unemployed individuals in information technology. Finally, the bill will authorize \$8 million per year for each of FYs 1999-2003 to create and to maintain an internet IT job openings database.

- Visa program enforcement penalties and operations: The penalty for willful violations of the H-1B or H-1C program will be \$5,000 (the current penalty is \$1,000). If an employer is found liable for willfully failing to meet a condition of employment under the H-1B attestations (regarding wages and working conditions) or for willfully misrepresenting a material fact, and if that employer has also replaced a United States worker with an H-1B or H-1C worker within 6 months prior or 90 days after making those violations, an additional fine of up to \$25,000 may be imposed and the employer will be barred from using the H-1B or H-1C programs for at least 2 years. Any employer that commits a willful violation will be put on a probationary period of up to 5 years, during which time spot inspections may be conducted without a complaint being filed. The Immigration and Naturalization Service (INS) will be required to adjudicate H-1B petitions within 30 days. Authority for adjudicating Labor Condition Attestations will be transferred from the Department of Labor to the INS. Improvements will be made to the prevailing wage calculations used for attestations. Posting options will be expanded (employers must inform employees of their intent to hire H-1B workers and of the conditions of employment).

- Miscellaneous: the Attorney General will submit quarterly reports on the numbers of H-1B visas that are granted. The Attorney General will submit annual reports on the occupations and compensation of H-1B workers. The National Academy of Sciences will establish a government-industry panel to report by October 1, 2000 on the expected labor market needs for workers with high-technology skills over the next 10 years. Per-country limits on permanent employment-based immigration visas will be changed to allow greater immigration from individual countries (the total limit on such visas will remain the same). Visiting scholars and aliens with similar visas will be allowed to accept honoraria and incidental expenses for usual academic activities. Special immigrant status will be given to North Atlantic Treaty Organization (NATO) civilian employees in the same manner as it is given to employees of certain international organizations. "Whistleblower" protections will be given to H-1B workers who file successful complaints against employers for H-1B violations. Applications for passports for minors will have to be signed by both parents, if married, and will have to be signed by the parent with primary custody if there has been a divorce. Employers who assist India in its nuclear weapons program will be ineligible for the H-1B program.

Those favoring final passage contended:

The Information Technology (IT) industry in America is growing by leaps and bounds. Currently, 10 percent of the IT jobs in this country are unfilled, 1.3 million new IT jobs will be added over the next 10 years, and America's universities are only expected to graduate one-fourth of the people with the skills needed to fill those jobs. If we do not find people who can fill those jobs in America, those companies will just move their operations overseas. They already have a large incentive to do so, because labor is much cheaper overseas, but so far they have preferred to stay in the United States. They have generally only gone overseas when they have been unable to find employees here. These jobs, in this country, pay very well--starting jobs average in the \$30,000-\$40,000 range, and can be higher than \$50,000 per year. If the jobs are for people with advanced degrees, the pay is even higher still. Due to the labor shortage in this country, American firms have been using the H-1B temporary immigrant program to get the help they need. That program, until recently, has not been fully utilized, but the huge shortage in the IT field has now caused it to reach its immigration ceiling early in the year. Companies are stuck--they cannot quickly hire enough immigrants because they have reached the ceiling (bringing in a permanent immigrant is a laborious process that takes an average of 2 years), and there are not enough qualified Americans to perform the jobs. As a result, jobs are already moving overseas--in 1997, 100,000 U.S. jobs were outsourced to India. If we do not act, that trend will continue, and the United States will lose this dynamic industry to foreign competitors.

This bill will meet the challenge in 2 ways. First, it will increase the H-1B ceiling so that companies can bring foreign skilled workers to this country to fill vacant IT positions instead of having to move those positions overseas. Second, as a longer-term

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solution, it will authorize funding for grants to train more Americans to fill these jobs. Numerous such efforts at the Federal, State, and local government levels are now underway, and IT companies are spending hundreds of millions of dollars of their own money to train American workers (Microsoft alone spends more than \$550 million annually). Most of the debate on this bill has focused on the temporary expansion of the H-1B program. The additional funding authorized by this bill will add to current efforts. Our expectation is that the numerous efforts now underway will result in America being able to produce enough qualified applicants to fill the growing number of IT jobs.

For many of us, that fact does not mean that we view this process as some sort of "zero-sum" game in which any job taken by a foreign worker is a job denied to an American worker. We will continue to support the H-1B program because the hundreds of thousands of people who have come to this country have produced innovations that have created millions of new jobs in America. Immigration of skilled workers, whether on temporary or permanent visas, should be encouraged.

All Senators, whether they are strong supporters of the H-1B program or not, should realize the value of this bill. It will keep the rapidly growing IT industry in America, to the benefit of all Americans. We urge our colleagues to join us in voting in favor of final passage.

While favoring final passage, some Senators expressed the following reservations:

We favor increasing the H-1B program, but we also believe that the safeguards to protect Americans' jobs and to protect immigrants from unfair labor practices are inadequate.

Those opposing final passage contended:

There are plenty of unemployed Americans who can be trained to fill current and projected IT openings. Companies do not want to hire those Americans because they are harder to abuse. Companies like the H-1B program because they can bring in foreign workers, make them work long hours, provide them less pay than promised, and deport them if they complain. We may not be able to prove how widespread the practice is, but we are certain that some companies have been getting rid of their long-time American citizen employees and replacing them with temporary foreign workers. We should not encourage this practice by increasing the cap on the number of H-1B immigrants who are allowed to enter this country each year. Therefore, we oppose final passage.